

COMPLIANCE BOARD OPINION NO. 00-8
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August 4, 2000

*Mr. Tom Marquardt
Managing Editor
The Capital-Gazette Newspapers*

The Open Meetings Compliance Board has considered your complaint that the Anne Arundel County Council violated the Open Meetings Act in connection with a meeting on May 22, 2000. For the reasons stated below, the Compliance Board finds that the Act was violated.

I

Complaint and Response

Your complaint alleged that on May 22, 2000, County Council Chairman Daniel E. Klosterman, Jr., “met privately with three other council members to discuss the proposed county budget. Among the items discussed were funding for a library, sound barriers, school improvements, and increasing school staffing.” Your complaint expressed the view that the Council violated the Open Meetings Act because this gathering of a quorum to discuss public business was held without public notice, without a vote to close the session, and without the taking of minutes.

In a timely response on behalf of the County Council, County Attorney Linda M. Schuett, Esquire, and Assistant County Attorney Heather Price Smith, Esquire, denied that the Act had been violated.¹ In essence, the County Council contended that no meeting subject to the Act occurred. The factual basis for this assertion was presented as follows:

As a long-standing, unofficial practice of the Council, the Chair and Vice Chair meet together with the County Executive to receive information relative to, in this instance, the proposed County budget. The

¹ The response of a public body to a complaint is ordinarily due within 30 days. §10-502.5(c)(2) of the State Government Article. The County Attorney’s Office, however, requested and received a brief extension of time to submit the County Council’s response.

Chair and Vice Chair report all information obtained at meetings with the County Executive to the other Council Members in an informal, random manner. The Chair undertakes this individual responsibility without any formal or informal approval by the Council....

On May 22, 2000, the Chair and Vice Chair met with the County Executive to discuss the proposed County budget. At this meeting, the presiding officer was appraised [*sic*] of the existence of a supplemental budget.... The Council had been preparing for the review of the County budget under the assumption that a supplemental budget had not been prepared. Learning that one was to be submitted created a problematic and time-sensitive situation for the Council Members, as priorities and strategies would need revision. Of primary importance to Council Members Murphy, Klocko, and Samorajczyk was funding for a school, a library and sound barriers, respectively.

After the meeting with the County Executive, the Chair and Vice Chair returned to their offices. The offices of all Council Members are centrally located and are in close proximity to one another. Upon return to the office, with the Vice Chairwoman present, the presiding officer proceeded to report the existence of a supplemental budget to Mr. Klocko, who happened to be in the office at that time.... The only subject of the report to Councilman Klocko was the existence of an unanticipated supplemental budget. No discussions took place, no vote was taken, no deliberations were conducted.

After a period of time had elapsed, Councilwoman Samorajczyk, who also happened to be in her office at the time, “poked her head into the room” (as per Vice-Chair Murphy) to listen to the report. At this point in time, an accidental quorum was created. However, once again, no discussion took place, no vote was taken, no deliberations were conducted.... The Chair did not solicit opinions or permit exchanges of ideas or strategies.

The County Council's position is that the Open Meetings Act did not apply to this gathering. The Council's contention is that the situation should be viewed as one in which Chairman Klosterman, acting as a single official, "was engaged in administrative duties that constitute an executive function not covered by the Act"; that "the gathering of the County Council members ... [was] analogous to a subgroup of the public body not covered by the Act"; that this "subgroup was engaged in an unplanned encounter not intended to circumvent the Act"; and that, because "the subgroup was not considering or transacting public business," no meeting occurred.

II

Analysis

A. Complaint Procedures

Before turning to the merits, the Compliance Board first must address a procedural contention raised by the County Council in its response: "In an action pursuant to the Open Meetings Act, the County Council is presumed to have complied with the Act and the complainant has the burden of proving that a violation occurred." This comment is correct about judicial actions alleging a violation of the Open Meetings Act, but it is incorrect as a description of the Compliance Board's procedures. The County Council cites §10-510(c), which provides as follows: "In an action under this section, it is presumed that the public body did not violate any provision of [the Act], and the complainant has the burden of proving the violation." The phrase "an action under this section" refers to a petition filed with the circuit court under §10-510(b). As we have previously held:

Neither the presumption against a violation nor the burden of proof provision in §10-510(c) has any application whatever to a complaint to the Compliance Board. There is no "burden of proof" for a complaint to the Board. The Board reviews all of the information submitted to it. If that information is sufficient for the Board to reach a conclusion about a violation, the Board will issue an opinion containing that conclusion.... If the Board cannot reach a conclusion, either because the information is insufficient or the evidence available is evenly balanced, the Board will issue an opinion explaining the reason for its inability to reach a conclusion.

Compliance Board Opinion 96-9, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 178, 180-81 (1996).

B. *Applicability of the Act*

The determinative issue in this complaint is whether the Act applied to the May 22 gathering of council members. If it did, then the Act was violated, for it is evident that the Council did not comply with the Act's requirements. Conversely, if the Act did not apply to the gathering, then those in attendance were subject to none of the Act's requirements.

In support of its position that the Act did not apply to the gathering, the Council presents several arguments. First, it suggests that the activities on May 22 were solely those of the Council Chairman, carrying out the individual task of relaying information that he had received from the County Executive. It is true, of course, that the Open Meetings Act does not apply to meetings convened by a single official. §10-502(h)(1)(i) and (3)(i). Moreover, as we have held in a number of prior opinions, the Act does not become applicable to a meeting convened by a single official merely because a majority of members of a public body attend the meeting. *See, e.g., Compliance Board Opinion 98-8, reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 27, 28 (1998).

The prior situations, however, involved a single official or group from *outside the public body* who called a meeting to which members of the body were invited.² By contrast, this situation involves not an outside official or group but rather the presiding officer of the County Council itself. Chairman Klosterman was carrying out a traditional function of the presiding officer of a multi-member body: conveying information that he received as a representative of the body and that was important to other members of the body. When the Chairman's briefing of other council members about the budget process involved less than a quorum of the Council, the Act did not apply, because the absence of a quorum means that no "meeting" occurred. §10-502(g). Once a fourth member arrived in the room, however, a "meeting" potentially began.

The Council suggests that this group of four members was the functional equivalent of an informally appointed subcommittee and was, therefore, not a "public body" subject to the Act. *See Compliance Board Opinion 99-12, reprinted*

² Compliance Board Opinion 92-2, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 6 (1992) (hospital board); Compliance Board Opinion 94-9, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 104 (1994) (city administrator); Compliance Board Opinion 95-4, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 120 (1995) (private organization); Compliance Board Opinion 96-3, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 157 (1996) (mayor); Compliance Board Opinion 96-10, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 183 (1996) (private company); Compliance Board Opinion 98-8, *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 20 (1998) (state legislators).

in 2 *Official Opinions of the Open Meetings Compliance Board* 70 (1999). The group of four council members, however, had not been previously designated by the Chairman to carry out some purpose related to the budget or otherwise. In other words, this group had no identity or pre-defined characteristics other than as members of the Council. Hence, the Compliance Board views the gathering of the four council members as a quorum of the Council, not as any separate or distinct subgroup.

The Council argues that this quorum did not engage in the “consideration or transaction of public business,” an element of the Act’s definition of “meeting.” §10-502(g). According to the Council, “the ‘meeting’ was nothing more than a reporting of information obtained by the Council Chair and Vice Chair while carrying out administrative duties. Most importantly, the encounter was in no way intended to circumvent the Act.”

We cannot accept the argument that the County Council was not engaged in the conduct of public business when it met to hear a report from the presiding officer about the County Executive’s plan to submit a supplemental budget. As we long ago held, “The imparting of information about a matter, albeit unaccompanied by any discussion among the members of a public body, constitutes the ‘consideration or transaction of public business’ with respect to that matter.... A briefing is often an important part of the process by which policy is made.” Compliance Board Opinion 93-6, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 35, 36 (1993). In a later opinion, Compliance Board Opinion 96-3, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 157, 159-60 (1996), we distinguished between a presentation having no connection to any particular legislative business, which would not involve the conduct of public business, and a presentation linked in a specific way to a topic before the body, which is the conduct of public business.

The County Executive’s preparation of a supplemental budget was a very important development in the Council’s consideration of the budget. As the Council’s letter indicated, this information resulted in the revision of “priorities and strategies” for council members. A briefing about it, even if limited in scope and devoid of discussion, constituted part of the conduct of public business – namely, the process by which the Council considered the budget. It is an axiom of open meetings law that the conduct of public business includes “every step of the process.” *City of New Carrollton v. Rogers*, 287 Md. 56, 72, 410 A.2d 1070 (1980). That this step of the process involved, in the Council’s phrase, “an accidental quorum” and therefore an unplanned meeting does not excuse compliance with the Act.

Finally, the Compliance Board disagrees with the Council’s contention that the presiding officer’s briefing of council members was an “executive function” to

which the Act did not apply. A topic cannot be within the executive function if it falls within any of the other functions defined in the Act. §10-502(d)(2). The “quasi-legislative function,” to which the Act applies, includes “the process or act of...approving, disapproving, or amending a budget.” §10-502(j). When a majority of council members came together to hear word of the supplemental budget, they were engaged in an aspect of the budget review and approval process. That is a quasi-legislative function subject to the Act, not an executive function excluded from it.

III

Conclusion

Because the Anne Arundel County Council did not comply with the Open Meetings Act when a quorum gathered on May 22, 2000, to hear information related to the budget approval process, the Council violated the Act. In so concluding, we do not mean to suggest that the four council members who gathered to hear the Chairman’s report intended to violate the Act. We accept that none of the participants thought that a meeting subject to the Act was taking place. What happened here was a failure of awareness, not a deliberate attempt to cut legal corners. Nevertheless, members of a public body have a duty to be especially sensitive to Open Meetings Act issues when, as here, a quorum is together, the setting is manifestly not a social one, and the topic bears directly on a pending matter.

OPEN MEETINGS COMPLIANCE BOARD

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